

# **WEST VIRGINIA SECURITIES COMMISSION**

## **STATEMENT OF POLICY**

### **Unsound Financial Conditions**

**February 18, 2009**

This Statement of Policy is adopted by the West Virginia Securities Commission pursuant to the authority of the Securities Commissioner of the State of West Virginia granted under Chapter 32 of the West Virginia Code. The West Virginia Securities Commissioner has determined that the following Statement of Policy relating to unsound financial conditions is consistent with public investor protection and is in the public interest. The commissioner may waive any requirement of this Statement of Policy for good cause, as he may determine. The terms used in this Statement of Policy are defined pursuant to the West Virginia Securities Commission Statement of Policy regarding Corporate Securities Definitions unless specifically stated otherwise within this Statement of Policy, or when the context clearly indicates otherwise.

- A.** This statement of policy applies to all applications to register by coordination or qualification.
- B.** The commissioner may deny the registration if the issuer is insolvent.
- C.** The commissioner may permit an insolvent issuer to sell securities if the issuer demonstrates that the offering proceeds and the issuer's long-term business plan will improve the issuer's financial condition. The commissioner may require pro forma financial statements acceptable to the commissioner. The pro forma financial statements shall include a description and documentation of any material assumptions and demonstrate when the issuer expects to be profitable.
- D.** If the issuer is insolvent, the prospectus shall disclose the following prominently:

- 1.** Persons should not invest unless they can afford to lose their entire investment; and
- 2.** The following risk factors, if applicable:
  - a.** The presence of an explanatory paragraph in the independent auditor's report;
  - b.** The issuer's lack of revenue from operations and an indication of how the issuer has been financing operations;
  - c.** The presence and amount of any accumulated deficit;
  - d.** The presence and amount of any negative shareholder's equity; or
  - e.** The need for future financing.
- E.** If the issuer is insolvent, the commissioner may impose net worth standards or limit the sale of securities to accredited investors instead of, or in addition to, the requirements in paragraphs D through F. The imposition of these minimal net worth standards does not relieve a dealer from the responsibility to make an independent determination of suitability required under industry standards.
- F.** Unless the commissioner determines that the risk associated with the offering should allow lower standards, public investors shall have the following:
  - 1.** A minimum annual gross income of \$70,000 and a minimum net worth of \$70,000, exclusive of automobile, home and home furnishings, or
  - 2.** A minimum net worth of \$250,000, exclusive of automobile, home and home furnishings.

Glen B. Gainer, III  
State Auditor  
Commissioner of Securities

By: Lisa A. Hopkins  
General Counsel  
Senior Deputy Commissioner of Securities

February 18, 2009